

139.105 Sourcing of retail sales -- Communications services, digital property, and florist wire sales.

- (1) (a) For purposes of the retailer's obligation to pay or collect and remit the taxes imposed by KRS 65.7634, 139.200, and 139.310, the retailer shall source retail sales not addressed in subsections (2), (3), and (4) of this section as follows:
 1. Over the counter. When the purchaser receives tangible personal property, digital property, or service at a business location of the retailer, the sale is sourced to that business location;
 2. Delivery to a specified address. When a purchaser or purchaser's donee receives tangible personal property, digital property, or service at a location specified by the purchaser, the sale is sourced to that location; or
 3. Address unknown. When the retailer of a product does not know the address where the tangible personal property, digital property, or service is received, the sale is sourced to the first address listed in this paragraph that is known to the retailer:
 - a. The address of the purchaser;
 - b. The billing address of the purchaser;
 - c. The address of the purchaser's payment instrument; or
 - d. The address from which the tangible personal property was shipped; from which the computer software delivered electronically or the digital property transferred electronically was first available for transmission by the retailer; or from which the service was provided, disregarding for these purposes any location that merely provided the actual digital transfer of the product sold.
- (b) Nothing included in this subsection shall affect the obligation of a purchaser to remit use tax pursuant to KRS 139.310.
- (2) The retailer shall source communications services as follows:
 - (a) A sale of mobile telecommunications services, other than air-ground radiotelephone service and prepaid wireless calling service, shall be sourced to the customer's or other purchaser's place of primary use;
 - (b) A sale of postpaid calling service shall be sourced to the origination point of the telecommunications signal as first identified by either the retailer's telecommunications system or information received by the retailer from its service provider, where the system used to transport the signals is not that of the retailer;
 - (c) A sale of prepaid calling service or a sale of a prepaid wireless calling service shall be sourced according to the provisions of subsection (1) of this section. If the sale is of a prepaid wireless calling service and the retailer does not know the address where the service is received, the sale shall be sourced to the first of the following that is known by the retailer:

1. The address of the customer available from the business records of the retailer;
 2. The billing address of the customer;
 3. The address from which the service was provided; or
 4. The location associated with the mobile telephone number;
- (d) A sale of a private communications service shall be sourced as follows:
1. Service for a separate charge related to a customer channel termination point shall be sourced to each level of jurisdiction in which the customer channel termination point is located.
 2. Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.
 3. Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of channel are separately charged shall be sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.
 4. Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed shall be sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points;
- (e) A sale of an ancillary service is sourced to the customer's place of primary use; and
- (f) A sale of other communications services:
1. Sold on a call-by-call basis shall be sourced based on the taxing jurisdiction where the call either originates or terminates and in which the service address is also located; or
 2. Sold on a basis other than a call-by-call basis shall be sourced to the customer's or other purchaser's place of primary use.
- (3) Florist wire sales shall be sourced in accordance with an administrative regulation promulgated by the department.
- (4) Advertising and promotional direct mail and other direct mail shall be sourced as provided in KRS 139.777.

Effective: January 1, 2017

History: Amended 2016 Ky. Acts ch. 111, sec. 14, effective January 1, 2017. -- Amended 2011 Ky. Acts ch. 33, sec. 2, effective July 1, 2011. -- Amended 2009 Ky. Acts ch. 73, sec. 2, effective July 1, 2009. -- Amended 2007 Ky. Acts ch. 141, sec. 2, effective July 1, 2007. -- Amended 2005 Ky. Acts ch. 154, sec. 1, effective June 20, 2005. -- Created 2003 Ky. Acts ch. 124, sec. 23, effective July 1, 2004.

Legislative Research Commission Note (6/20/2005). Under KRS 7.136(1)(h), the Reviser of Statutes has corrected the capitalization and punctuation of an amendment

that was made to subsection (2)(c) of this statute in 2005 Ky. Acts ch. 154, sec. 1.